

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 438 of 2000

to

FIRST APPEAL No 443 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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SPL.LAQ OFFICER

Versus

SHANABHAI DIPSINH

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Appearance:

Ms Hansa B Punani, AGP for Petitioners

MR VIJAY N RAVAL for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE D.P.BUCH

Date of decision: 04/07/2000

ORAL(COMMON) JUDGEMENT

By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') read with Section 96 of the Code of Civil Procedure, the appellants have challenged the common judgment and award dated September 23, 1999 passed by the learned 4th Civil Judge (SD), Godhra, District Panchmahals in Land Acquisition Reference Nos. 994, 996, 1006, 1008, 1010, 1011 by which the Reference Court awarded additional amount of compensation at the rate of Rs.6.20 paise per sq. metre for the acquired land belonging to the respondents situated at village Satamana, Taluka Kalol, District Panchmahals. As common questions of facts and law are involved in this group of First Appeals, we propose to dispose them of by this common judgment.

2. The Executive Engineer, Narmada Main Canal, Division II-A, Kalol sent proposal for acquisition of the agricultural land situated at village Satamana, Taluka Kalol for the public purpose of construction of Narmada main canal. The said proposal was scrutinised by the State Government and preliminary notification under section 4(1) of the Act was published in the Government Gazette on October 5, 1987. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After following the usual procedure, the Land Acquisition Officer submitted report to the State Government as contemplated by Section 5A (2) of the Act. The said report was accepted by the State Government and declaration under Section 6 of the Act was made which was published in the Government Gazette on April 11, 1998. The Land Acquisition Officer served the notices under Section 9 of the Act to the persons interested in the lands and after collecting materials, he made his award on December 6, 1989 and offered compensation of the acquired lands at the rate of Rs.0.80 paise per sq. metre.

3. The respondents were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate and, therefore, have filed application under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court, Panchmahals for determination of the market value of the acquired lands. Accordingly the said applications were forwarded to the District Court, Panchmahals which came to be numbered as Land Acquisition Reference Cases as mentioned hereinabove. According to the claimants,

the acquired lands were having high fertility and the claimants were solely depend on the income of the agricultural produces of the acquired lands. Before the Reference Court, the claimants claimed compensation at Rs.20/- per sq. metre. The applications filed by the claimants were contested by the appellants, inter-alia, contended that the claimants are not entitled to claim enhanced compensation. The Land Acquisition Officer has considered fertility of the land as well as prevailing market price on the relevant date and awarded just and adequate compensation to the claimants for their acquired lands and, therefore, the applicants prayed that the appeals be dismissed with costs.

4. On the rival assertions made by the parties, the Reference Court raised common issues in LAR No.994/90 at Exh.13. The claimants to substantiate their claims of enhanced compensation examined Chhatrasinh Omsinh Parmar-claimant of LAR No.996/90 at Exh.17. During his deposition he produced certified copies of judgment and award rendered in LAR No.996/90. Previous award at Exh.18 in respect of the acquired lands of village Satamana, the notification of the acquired lands which is the subject matter of previous award Exh.18, was published on December 5, 1987 i.e. after two months of the notification in respect of the present acquired lands. The Reference Court in previous award Exh.18 had determined compensation of the acquired lands of the same village Satamana at Rs.8/- per sq. metre as on December 5, 1987. The witness claimed that the lands of previous award Exh. 18 were in all respects similar to the present acquired lands and were situated in the same authority. The witness further deposed that the previous award Exh.18 was challenged before the High Court wherein the Division Bench (B N Kirpal, C.J. & A N Divecha, J. as Their Lordships then were), by judgment and order dated February 6, 1995 had determined market value at the rate of Rs.7/- per sq. metre. The witness claimed that the judgment of the Division Bench of the High Court was challenged in the Supreme Court in SLP Nos. 9069 to 9076/95 (Exh.20) which were summarily dismissed and the market value was determined at Rs.7/- per sq. metre for the acquired lands of Satanama was confirmed. Thus the market value of the acquired lands determined at the rate of Rs.7/- per sq. metre as on October/December, 1987 was confirmed upto the stage of Supreme Court. The reference Court relying on the previous award Exh.18 which was confirmed by the High court and the Supreme Court had determined the market value of the present acquired lands of village Satamana as on October 5, 1987 at the rate of Rs.7/- per sq. metre which has given rise to filing of

this group of appeals by the appellant.

5. Learned AGP, Ms. Hansa B Punani has taken us to the entire records produced by the Reference Court and vehemently submitted that as the claimants have not led sufficient evidence for the determination of the market value of the acquired lands and the award of the Reference Court was excessive, these appeals be allowed. In our opinion, the contentions raised by the learned AGP is devoid of any merit and the same deserves to be rejected. The acquired lands of previous awards were of the same village of Satamana wherein the determination of the market value at the rate of Rs.7/- was confirmed by the High Court and the Supreme Court. The claimants have led sufficient evidence that the acquired lands in all respects are similar and having all advantageous features. It is well settled principle that in absence of any other evidence, previous awards of the lands of similar village or adjoining village having same fertility can be relied on for determination of the market value of the acquired lands. We are of the opinion that the Reference Court has not committed any error in relying on the previous awards Exh.18 in respect of the acquired lands in the same village Satamana. The Reference Court had awarded just, adequate and reasonable compensation for the acquired lands and we do not find any reason to interfere with the said determination of the compensation of the acquired lands. The claimants would be entitled to all the statutory benefits under Section 23(1-A) and 23(2) and interest under Section 28 of the Act which also would be just and proper and it does not call for any interference. However, it is clarified that the claimants-respondents shall not be entitled to solatium on the amount under Section 23(1-A) of the Act and no interest shall be paid on the amount of solatium as per the decision of the Prem Nath Kapur v. National Fertilizers Corporation of India, (1998 (2) SCC 71.

With this clarification, we dismiss this group of Appeals. There shall be no order as to costs.

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msp.